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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by Friends World Committee for Consultation, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[14 February 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Conscientious objection to military service

The right to conscientious objection to military service

Friends World Committee for Consultation (Quakers) would like to draw the Human Rights Council's attention to the negative implications for conscientious objectors to military service when there is no recognition of the right to conscientious objection in their countries or the provisions exclude some conscientious objectors. These implications include: punishment and discriminatory treatment; criminal prosecution; and lack of necessary identity documentation.

Punishment and discriminatory treatment of unrecognised conscientious objectors

The right to conscientious objection to military service has been recognised by the Council as derived from the right to freedom of thought, conscience and religion or belief.[1] Regrettably, not all States that retain a system of obligatory military service recognise the right to conscientious objection. Even where the right is recognised in principle, the provisions or the way they are applied may exclude some conscientious objectors. If the State does not recognise conscientious objectors and make provisions, those who refuse to perform military service may be classified as draft evaders or deserters and treated as such.[2] In such situations, conscientious objectors face a wide range of serious violations for their refusal to perform military service. These include:

- Criminal Prosecution
- Imprisonment
- Fines
- Consequences of having a criminal record
- Lack of necessary identification documentation
- Restrictions on enjoyment of civil rights
- Limited employment opportunities
- Inability to access or complete education
- Difficulty in leaving the country, which can deprive them of their right to seek asylum

Criminal prosecution and consequences of having a criminal record

Unrecognised conscientious objectors may be prosecuted and imprisoned for their refusal of military service. This may result in criminal records, leading to lifelong societal and economic disadvantages. The Human Rights Committee has expressed concern that "convicted conscientious objectors bear the stigma of a criminal record".[3]

Some States still expect persons to perform military service after punishment for refusal, which amounts to coercion to change one's religion or belief. Those who persist with their objection risk being convicted and sentenced multiple times for the same offence, in breach of the principle of *ne bis in idem*.[4]

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1 Human Rights Council resolution 24/17 (A/HRC/24/17) of 27 September 2013.
See also: Human Rights Committee General Comment No. 22 (CCPR/C/21/Rev.1/Add.4 of 30 July 1993), 'The right to freedom of thought, conscience and religion or belief (Article 18)'.

2 European Court of Human Rights Chamber II *Erçep v Turkey*, application no. 43965/04 (22 November 2011).
European Court of Human Rights Grand Chamber, *Bayatyan v Armenia*, application no. 23459/03 (20 July 2011).

3 Human Rights Committee, Concluding Observations on Republic of Korea (CCPR/C/KOR/CO/3 of 28 November 2006), para.17.

4 Human Rights Committee General Comment No. 32 (CCPR/C/GC/32 of 23 August 2007), 'Right to equality before courts and tribunals and to a fair trial (Article 14)'.

Conscientious objectors with criminal records are particularly disadvantaged in terms of employment opportunities. For instance, they may not be eligible to be appointed to public office or find work with private employers.[5] A representative of the Jehovah's Witness, a religious group known for their conscientious objection to military service, suggests that it is thus "nearly impossible" for conscientious objectors with a criminal record to find employment, particularly in the public sector or with larger corporations.[6]

Conscientious objector, Iakovos Thlimmenos, was disbarred from practicing as an accountant because he had a criminal conviction for a "serious crime", after he disobeyed an order to wear military uniform.[7] Whilst acknowledging that States may exclude some offenders from certain professions, the European Court of Human Rights considered, however, that "a conviction for refusing on religious or philosophical grounds to wear the military uniform cannot imply any dishonesty or moral turpitude likely to undermine the offender's ability to exercise this profession".[8] It was found that Thlimmenos was a victim of discrimination and there had been a violation of his right to freedom of thought, conscience and religion.[9] Following the judgement, the State provided for the deletion of convictions resulting from conscientious objection to military service.[10] The Human Rights Committee has also called on States to expunge criminal records when convictions resulted from conscientious objection to military service.[11]

Lack of military or other identity documentation

To ensure citizens comply with military service requirements, governments often use a system of military documentation. Known in Latin America as the *libreta militar*, a certificate of military service is issued in other regions, notably Eastern Europe. This acts as proof that an individual has adhered to military service requirements, but is often also an essential document necessary to enjoy basic rights. Military documentation is used as a form of identity documentation in itself or can be integrated into the national system of identity documentation. Alternatively, military documentation is sometimes required in order to be issued with identity documents, such as identity cards or passports.

Conscientious objectors may be unable to obtain military documentation, and therefore necessary identity documentation, because they have not complied with military service requirements, if there is no or inadequate provision for conscientious objection. Sometimes conscientious objectors are entitled to identity documentation, even without military documentation, but cannot obtain such documents in fear of alerting the authorities to their presence, thereby risking arrest and forced recruitment.

Without military or other identity documentation, conscientious objectors may be unable to:

- Own property[12]
- Open a bank account[13]
- Register residency[14]

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5 *Eu-min Jung et al v Republic of Korea* (CCPR/C/98/D/1593-1603/2007 of 14 April 2010), para.5.6.

6 Dae-il Hong, representative of the Republic of Korea office of Jehovah's Witnesses cited in "Injustice in South Korea Causes International Outcry" (1 October 2013).

7 European Court of Human Rights Grand Chamber, *Thlimmenos v Greece*, application no. 34369/97 (6 April 2000).

8 Ibid, para.47.

9 Violation of article 14, non-discrimination, taken in conjunction with article 9, freedom of thought, conscience and religion, of the European Convention on Human Rights.

10 Article 27 of Law 2915/2001, Greece

11 *Atasoy and Sarkut v Turkey* (CCPR/C/104/D/1853-1854/2008 of 19 June 2012), para.12.
Kim et al v Republic of Korea (CCPR/C/106/D/1786/2008 of 1 February 2013), para.9.

12 Conscience and Peace Tax International (CPTI) (2010) *UPR Submission: Turkey.* 8th Session, May 2010.
United States (US) Commission on International Religious Freedom (2013) *Annual Report: Eritrea.*

13 CPTI (2010) *UPR Submission: Turkey.* 8th Session, May 2010.

- Vote or be eligible for election[15]
- Obtain or replace birth registration documentation as an adult[16]
- Register marriage[17]
- Legally recognise their child[18]
- Obtain employment, especially in the public sector[19]
- Matriculate, graduate or obtain a degree from university[20]
- Leave the country[21]

These restrictions have a number of negative implications for conscientious objectors and their families, including an inability to find work legally. This means that conscientious objectors often live excluded from the formal economy. Restrictions on leaving the country not only deprive conscientious objectors of their right to freedom of movement, but also make it more difficult to flee and seek asylum, if they have a well-founded fear of persecution. In addition, limitations on civil registration can put individuals and their children at risk of statelessness. Some ethnic or religious groups have had their citizenship revoked or withheld, on the grounds that they have refused or avoided military service.[22] In another case, a religious minority group was banned and one of the primary reasons given was conscientious objection to military service.[23]

Other forms of discrimination

Conscientious objectors face other forms of formal and informal discrimination. They may have to pay higher taxes and could lose their eligibility to state subsidies and social security.[24] In addition, conscientious objectors may face

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14 CPTI (2012) *Armenia: conscientious objection to military service and related issues.* Submission to the 105th Session of the Human Rights Committee: July 2012.

15 Human Rights Committee, Concluding Observations on Turkey (CCPR/C/TUR/CO/1 of 13 November 2012).
Ministerio de Defensa del Estado Plurinational de Bolivia (2012) *Generalidades: Servicio Militar*, p.18.

16 Ministerio de Defensa del Estado Plurinational de Bolivia (2012) *Generalidades: Servicio Militar*, p.18.

17 CPTI (2012) *Armenia: conscientious objection to military service and related issues.* Submission to the 105th Session of the Human Rights Committee: July 2012.
European Court of Human Rights Chamber II *Ülke v. Turkey*, application no. 39437/98 (24 January 2006)
US Commission on International Religious Freedom (2013) *Annual Report: Eritrea.*

18 European Court of Human Rights Chamber II *Ülke v. Turkey*, application no. 39437/98 (24 January 2006)

19 Article 36 of Law 48/1993, as amended by Decree 2150/1995, Colombia as cited in War Resisters' International (2009) *Conscientious Objection in Colombia.*
CPTI (2012) *Armenia: conscientious objection to military service and related issues.* Submission to the 105th Session of the Human Rights Committee: July 2012.
CPTI (2008) *UPR Submission: Turkmenistan* 3rd Session, December 2008.

20 CPTI (2010) *Colombia: Conscientious objection to military service and related issues.* Submission to the 99th Session of the Human Rights Committee: July 2010.
CPTI (2005) *Military recruitment and conscientious objection: a thematic global survey (*Yemen*)*, p.24.
International Fellowship for Reconciliation (IFOR) and CPTI (2013) *Submission to the 109th Session of the Human Rights Committee: Bolivia.*

21 IFOR and CPTI (2013) *Submission to the 109th Session of the Human Rights Committee: Bolivia.*
Joint Statement*: Solidarity with Egyptian conscientious objectors, Emad el Dafrawi and Mohamed Fathy*. 10 November 2013.
Netherlands: Ministry of Foreign Affairs (2001) *Turkey/Military Service.*
US Department Of State (2012) *Country Reports on Human Rights Practices: Eritrea.*
War Resisters' International (2005) *Conscientious objection to military service in Greece: Human Rights shortfalls.* Submission to the 83rd Session of the Human Rights Committee: February 2005

22 Refugees International (2009) *Nationality rights for all (*Azerbaijan*).*
US Department Of State (2012) *Country Reports on Human Rights Practices: Eritrea.*

23 US Commission on International Religious Freedom (2013) *Annual Report: Tajikistan.*

24 CPTI (2005) *Military recruitment and conscientious objection: a thematic global survey* (Singapore, Colombia and Switzerland), pp.24.34.35.

problems securing employment, beyond the question of having a criminal record or lack of documentation. They may be deprived of licences and official business permits, or may not be eligible to work in public organisations, the civil service or police.[25] Discrimination against conscientious objectors may also happen informally. In practice, employers may include military service in job specifications and as a condition for acceptance, creating a subtle form of discrimination based on the grounds that, without military experience, conscientious objectors do not have necessary skills or qualities.[26]

Recommendations

FWCC (Quakers) calls on the UN Human Rights Council to:

i. continue to pay attention to the protection and promotion of the right to conscientious objection to military service;

ii. specifically include the promotion and protection of the rights of conscientious objectors to military service in relation to relevant thematic resolutions; and to

iii. urge States to

a) fully implement the right of conscientious objection to military service in law and practice;

b) cease prosecuting and imprisoning all conscientious objectors;

c) release immediately imprisoned conscientious objectors and expunge their criminal records;

d) provide conscientious objectors with the necessary documentation to interact with the State and enable full access to education and employment; and to

e) prohibit discrimination against conscientious objectors, in law and practice, in relation to their terms or conditions of service, or any civil, political, economic, social or cultural rights.

CPTI (2010) *Israel: Conscientious objection to military service and related issues.* Submission to the 99th Session of the Human Rights Committee: July 2010.
Lawyer Hülya Üçpınar: Ref 39437/98, 24/01/2006 *Ülke Judgment (Turkey)*, Final on 24/04/2006. (September 20 2012)
"Solomon Amendment" to Section 12(f), Military Selective Service Act, US, of September 1982.
US Department Of State (2012) *Country Reports on Human Rights Practices: Eritrea.*

[25] Articles 76 and 93(1) of The Military Service Act, Republic of Korea as cited in Kuk Cho (2007) "Conscientious Objection to Military Service in Korea: The Rocky Path from Being an Unpatriotic Crime to a Human Right" in *Oregon Review of International Law* Vol.9.
CPTI and IFOR (2012) *Joint UPR Submission: Republic of Korea* 14th session, October 2012.
European Commission (2009) *Developing anti-discrimination law in Europe* (Slovenia), p.67.
US Department Of State (2012) Country Reports on Human Rights Practices: Eritrea.

[26] ADALAH (2010) NGO Report to the UN Committee on Economic, Social and Cultural Rights Regarding Israel's Implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR).
Hannah Brock (2012) 'Conscientious objectors' in *The Friend* Vol.170 No.51, pp.10-11.